(2009) 04 PAT CK 0034

In the Patna High Court

Case No : CWJC No. 4718 of 2009

Upendra Yadav — APPELLANT

Vs

The State of Bihar and Another — RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2009) 3 PLJR 582

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : N.K. Agarwal and D.N. Tiwari, for the Appellant;

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Petitioner is aggrieved by order dated 6.1.2009 passed by the Sub-Divisional Officer, Sheikhpura by which he has cancelled the licence granted to the petitioner under the Public Distribution System bearing licence No. 3 of 1993 purporting to act pursuant to the directions issued by the Secretary, Department of Food, Civil Supplies and Consumer Protection as contained in letter No. 796 dated 4.3.2006. The ground for cancellation is that as per the said directives, a PDS licence could not be transferred nor it could be issued to a partnership firm. Petitioner has assailed the validity of the said order. With consent of parties, the writ application is being disposed of at the stage of admission itself.

2. One Chhote Lal Manjhi was granted a licence being licence No. 3 of 1993 under the provisions of the Bihar Trade Articles (Unification of Licenses) Order, 1984 for carrying on business as a dealer under the Public Distribution System. Under the provisions of the Unification order, as enforced then, Sub-Divisional Officer was the licensing authority for retail dealers which include dealers like the petitioner.

3. By order dated 25.3.1995 (Annexure-1), the said Chhote Lal Manjhi was

permitted to induct the petitioner Upendra Yadav as a partner and licence was, accordingly, amended. Thereafter, by order dated 23.5.1996, the said Chhote Lai Manjhi was permitted to withdraw from the partnership and, as such, again the licence was amended. The result was that the licence which was originally issued in the name of Chhote Lal Manjhi now stood transferred to the petitioner under due permission granted by the Sub-Divisional Officer, Sheikhpura. All this was done more than a decade back and, since then the petitioner is working as a dealer under PDS on basis of the said licence till its order of cancellation as impugned.

4. Shri N.K. Agarwal, learned Senior Counsel appearing on behalf of the petitioner submits that any policy decision taken and/or any amendment in any statute can have only a prospective effect. The circular issued by the Secretary, Department of Food, Civil Supplies and Consumer Affairs is of 2006. It cannot take away a right that was created 10 years earlier. Similarly, he submits that Clause 9 of the Bihar Fair Price Shop Licensing Order, 2007 also would have a prospective effect and could not entail cancellation of existing licence.

5. In order to appreciate the submissions, a legislative history is necessary. So far as State of Bihar is concerned, there was no separate licensing order for fair price shop dealers. Fair price shop dealers being retail dealers in foodgrains, sugar, kerosene oil were deemed to be retail dealers to whom the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984 applied. The licences were, accordingly, required to be taken. In 2001, in exercise of powers conferred u/s 3 of the Essential Commodities Act, the Central Government issued the Public Distribution System (Control) Order, 2001. The said order extended to whole of India and provided for various matters in relation to the public distribution system. Clause 7 of the PDS Order, 2001 provides for licensing and it provides that licences or authorization of fair price shop shall be as per paragraph-5 of the annexe to the order. Paragraph-5 of the annexe to the order provides for licensing and it states that the State Government shall issue an order u/s 3 of the Act for regulating the sale and distribution of essential commodities and for grant of licences to the fair price shop owners and certain guidelines are provided therein. In exercise of powers delegated to the State Government in terms thereof, State Government issued notification dated 20.2.2007 providing for licensing of fair price shops under the public distribution system. It also clarified that on and from the date of enforcement of this order (hereinafter referred to as the Bihar Public Distribution System Order, 2007), all licences and agreements earlier granted would stand terminated and fresh licences in lieu thereof would be issued within six months under this new Bihar Public Distribution System Order, 2007. It was also clarified that the Bihar Trade Articles (Licences Unification) Order would have no application hereafter. This Bihar Order, in detail, provides for licensing of fair price shops and the distribution system. Clause 9 thereof deals with transfer of licences. It is quoted hereunder:

"Transfer of licence.--The licence shall not be transferred to any other member of the family/any other person. There cannot be any partner in the licence."

6. It is on basis of this that Shri Agarwal submits that these provisions came with effect from 20.2.2007 and cannot be retrospective. In my view, the very wording of these provisions show that it is prospective in application as the terminology used therein is "licences shall not be transferred to any member". It does not talk of licences which have already been transferred in the past. In the present case, as noted above, if at all the transaction in relation to petitioner''s licence can be termed to be a transfer, it was done more than a decade back. That cannot be unsettled now. Mr. Agarwal is, thus, correct in his submission. For a transfer if at all affected one decade back, the provisions cannot be taken aid of licence cancelled. Thus, the order of the Sub-Divisional Officer, Sheikhpura cannot be sustained and is liable to be quashed and is quashed as such. The writ application is allowed.